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# A BILL FOR AN ACT

RELATING TO THE HAWAII CIVIL RIGHTS COMMISSION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that when Act 387,  
2 Session Laws of Hawaii 1989, was enacted and codified as section  
3 368-1.5, Hawaii Revised Statutes (section 368-1.5), it was meant  
4 to be the state counterpart to section 504 of the federal  
5 Rehabilitation Act of 1973 (section 504), as amended, to provide  
6 a state remedy for disability discrimination and an alternative  
7 in situations where federal remedies are also available.  
8 Additionally, section 368-1.5, provides those with disabilities  
9 non-discriminatory access to state financially assisted  
10 activities and programs regardless of whether that program or  
11 activity also receives federal financial assistance.

12           The legislature further finds that the intent of section  
13 368-1.5, was originally, and is now, to give the Hawaii civil  
14 rights commission jurisdiction over disability discrimination  
15 claims, even if protections under section 504 are applicable.

16           Therefore, the purpose of this Act is to clarify the intent  
17 of the legislature in enacting section 368-1.5, in light of the



1 Hawaii Supreme Court's decision in *Hawaii Tech. Acad. v. L.E.*,  
2 141 Haw. 147, 407 P.3d 103 (2017), which held that the  
3 legislature did not intend the Hawaii civil rights commission to  
4 have jurisdiction over disability discrimination claims under  
5 section 368-1.5, if protections under section 504 are  
6 applicable. To address possible concerns regarding potential  
7 duplication of services under the Individuals with Disabilities  
8 Education Act, P.L. 101-476, as amended, and the Rehabilitation  
9 Act of 1973, and their respective appeals processes, this Act  
10 excludes cases within the scope of the Individuals with  
11 Disabilities Education Act from the Hawaii civil rights  
12 commission's jurisdiction under section 368-1.5.

13 SECTION 2. Section 368-1.5, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§368-1.5 Programs and activities receiving state**  
16 **financial assistance.** (a) No otherwise qualified individual in  
17 the State shall, [~~solely~~] by reason of [~~his or her~~] the  
18 individual's disability, be excluded from the participation in,  
19 be denied the benefits of, or be subjected to discrimination by  
20 state agencies, or under any program or activity receiving state  
21 financial assistance.



1 (b) As used in this section [~~the term "disability"~~]:  
 2 "Disability" means the state of having a physical or mental  
 3 impairment which substantially limits one or more major life  
 4 activities, having a record of such an impairment, or being  
 5 regarded as having such an impairment.

6 [~~(c) As used in this section, "state"~~]  
 7 "Program or activity receiving state financial assistance"  
 8 includes a program or activity that receives federal and state  
 9 financial assistance.

10 "State financial assistance" means grants, purchase-of-  
 11 service contracts, or any other arrangement by which the State  
 12 provides or otherwise makes available assistance in the form of  
 13 funds to an entity for the purpose of rendering services on  
 14 behalf of the State. It does not include procurement contracts,  
 15 state insurance or guaranty contracts, licenses, tax credits, or  
 16 loan guarantees to private businesses of general concern that do  
 17 not render services on behalf of the State."

18 SECTION 3. Section 368-11, Hawaii Revised Statutes, is  
 19 amended by amending subsection (a) to read as follows:

20 "(a) The commission shall have jurisdiction over the  
 21 subject of discriminatory practices made unlawful by part I of



1 chapter 489, chapter 515, part I of chapter 378, and this  
2 chapter[-]; provided that the commission shall not have  
3 jurisdiction over claims within the scope of the Individuals  
4 with Disabilities Education Act, P.L. 101-476, as amended. Any  
5 individual claiming to be aggrieved by an alleged unlawful  
6 discriminatory practice may file with the commission's executive  
7 director a complaint in writing that shall state the name and  
8 address of the person or party alleged to have committed the  
9 unlawful discriminatory practice complained of, set forth the  
10 particulars thereof, and contain other information as may be  
11 required by the commission. The attorney general, or the  
12 commission upon its own initiative may, in like manner, make and  
13 file a complaint."

14 SECTION 4. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect on December 31,  
17 2059.



**Report Title:**

Deaf and Blind Task Force; Hawaii Civil Rights Commission;  
Disability; Discrimination

**Description:**

Clarifies the meaning of "program or activity receiving state financial assistance". Excludes cases within the scope of the Individuals with Disabilities Education Act from the jurisdiction of the Hawaii civil rights commission. Effective 12/31/2059. (HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

